

SENATE BILL 1621
By Herron

AN ACT to amend Tennessee Code Annotated, Title 29 and Title 50, Chapter 5, relative to the Tennessee Protection of Minors Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 5, is amended by adding the following as a new, appropriately designated part:

50-5-201. This act shall be known and may be cited as the "Tennessee Protection of Minor Performers Act".

50-5-202. The general assembly shall have power to amend or repeal all or part of the sections of this part at any time and all persons subject to this part shall be governed by such amendment or repeal.

50-5-203. As used in this part, unless the context otherwise requires:

"Artistic or creative services" means, but is not limited to services as an actor, actress, dancer, musician, comedian, vocalist (including demonstration recordings) stunt-person, voice-over artist, model, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer, or other performing artist.

"Minor" means any person who has not attained eighteen (18) years of age and has not had the disability of minority removed so as to make this part inapplicable.

50-5-204. The sections of this part do not repeal or affect the rights or powers under "Removal of Disability of Minors", Sections 29-31-101, et seq., and all provisions of such statute shall remain in force and effect an applicable to the appropriate circumstances addressed therein.

50-5-205. Approval of a contract pursuant to the sections of this part shall not:

(1) Exempt any person from any other law with respect to licenses, consents, or authorizations required for any conduct, employment, use, or exhibition of the minor in this state, nor limit in any manner the discretion of the licensing authority or other persons charged with the administration of such requirements, nor dispense with any other requirement of law relating to the minor;

(2) Unless specifically so provided in the order, remove the disability of non-age for any other contract with the same minor which is not approved by the court pursuant to this section, nor unless specifically so provided in the order, is the disability of non-age of the minor removed generally for the minor, nor is the minor emancipated for any other purpose or contract other than the performance of contracts approved pursuant to this section; and

(3) Be granted for a contract which provides for an employment, use, or exhibition of the minor, within or without the state, which is prohibited by law and in particular by any federal or state minor labor law, and could not be licensed to take place in this state.

50-5-206. The provisions of the chapters of this title shall apply to every minor person who desires to perform artistic or creative services in the state of Tennessee, including minor persons who reside in the state of Tennessee and minor persons not residing in Tennessee. As

long as some, or all, of the services are to be provided or delivered in Tennessee, or at least one (1) of the other parties are doing business in Tennessee.

50-5-207. If a contract is approved by the appropriate court pursuant to the provisions of this part, then such minor may not, either during minority or after reaching majority, disaffirm such contract on the ground of minority or after reaching majority, disaffirm such contract on the ground of minority nor may such minor assert that the minor's parent or guardian lacked the authority to make such contract personally as an adult.

50-5-208. Application for an order pursuant to this section may be made by the minor, or the minor's parent, or legal guardian, or guardian ad litem appointed pursuant to this part. For the purposes of any proceeding under this part, a parent or legal guardian, as the case may be, entitled to the physical custody, care, and control of the minor at the time of the proceeding shall be considered the minor's guardian ad litem for the proceeding, unless the court shall determine that appointment of a different individual as guardian ad litem is required in the best interests of the minor.

50-5-209.

(a) Approval under the sections of this part may be sought for a contract or agreement that is fully executed, is already in existence or under which the parties are currently performing. Approval may be effective as of the date upon which the contract has been executed, or the date when services were first performed by the minor, if specifically so ordered by the court. The parties may petition the court for approval to be effective within one (1) year of the contract's ratification by the court. The parties may also petition the court for approval of a contract's effective date exceeding one (1) year of the contract's ratification by the court, if good cause is shown by the petitioners.

(b) If a contract is approved pursuant to the provisions of this part, all earnings, royalties, or other compensation earned or received by the minor pursuant to such approved contract

shall become the sole property of the minor who will be authorized to execute any contracts relating to administration or investments of such earnings.

50-5-210. Petition for contract approval hereunder shall be filed with and, when granted, approved by the court handling probate matters for the county in which the minor resides, where the minor is employed or where the minor performs or renders such minor's services, or intends to do so; or the county in this state where performance of the contract shall be conducted, if the minor is not a resident of the state where the majority of the services are performed and the non-minor party to the contract is either a resident of this state or has been qualified or licensed to do business in Tennessee.

50-5-211. After a petition is filed pursuant to Section 50-5-208, and following such reasonable notice to all parties to the contract as is fixed by the court, the court will provide all parties to the contract with the opportunity to appear and be heard. The court may approve the contract following such hearing.

50-5-212. Court approval of a valid contract shall serve to bind the minor as if such minor executed the contract personally as an adult; and the minor shall be bound to all provisions including the permanent sale of intellectual property rights; provided, that such revocation of approval of the contract by the court shall not include the transfer back to the minor of intellectual property rights unless there has been a showing of fraud or misrepresentation by the employer; and, further, that the court approving such contract shall retain the authority to revoke approval of the contract, or modify its terms if assented to by both parties, if the court finds that the well being of the minor requires such disapproval.

50-5-213. Contracts eligible for approval under this act shall include contracts pursuant to which a minor person is employed, employs, or agrees to perform or render artistic or creative services, either directly or through a third party including without limitation a personal services corporation, manager, booking agent, or producer. For purposes of this act, when a minor renders services as an extra, background performer, or in a similar capacity, through an

agency or service that provides one (1) or more performers for a fee, the agency or service shall be considered the minor's employer.

50-5-214. Modifications, amendments, or assignments of contracts previously approved by the court are deemed a new contract and require separate approval under these chapters.

50-5-215.

(a) At any time after the filing of the petition, the court in its discretion may appoint a guardian ad litem to represent the interests of the minor or to oversee the minor's earnings related to the contract approved under these chapters. The court shall appoint a guardian ad litem as to any contract where the parent or guardian will receive remuneration or financial gain from the performance of the contract or if the court deems that such persons have any other conflict of interest with the minor. The court, in determining whether a guardian ad litem should be appointed, may consider the following criteria:

(1) The length of time the exclusive services of the minor are required.

(2) Whether the gross earnings of the minor under the contract are either contingent or unknown.

(3) The amount of gross earnings of the minor under the contract.

(4) The age of the minor.

(b) The guardian ad litem shall be entitled to reasonable compensation. The court shall have the power to determine which party shall be responsible for the fee, whether the fee and any required bond shall be paid from the earnings of the minor pursuant to the contract sought to be approved, or may apportion the fee between the parties to the proceedings.

50-5-216.

(a) A parent, guardian, or legal custodian entitled to the physical custody, care, and control of a minor who enters into a contract of a type described in this chapter shall provide a certified copy of the minor's birth certificate indicating the minor's minority to the other party or parties to the contract.

(b) A guardian or a person with temporary legal custody must provide a certified copy of the court document appointing such person as the minor's legal guardian.

(c) A complete copy of the contract or proposed contract shall be attached to the petition. The petition shall also include the following information:

(1) The full name, residence, and date of birth of the minor.

(2) The name and residence of any living parent of the minor, the name and residence of the person who has care and custody of the minor, and the name and residence of the person with whom the minor resides.

(3) A statement that the minor is a resident of the state of Tennessee. If the minor is not a Tennessee resident, a statement that the petition is for approval of a contract for performance or rendering of services by the minor in the state of Tennessee, specifying the place in Tennessee where the services are to be performed or rendered.

(4) A brief description of the minor's employment and compensation under the contract, including where services of the minor are to be performed, accompanied by a plan for the protection of the minor's earnings under the contract.

(5) The full name and residence of the petitioner, and the interest of the petitioner in the contract or proposed contract or, in the minor's performance under it.

(6) Such other facts known by the petitioner regarding the minor and the minor's family and property that will show that the contract is reasonable, prudent, and in the best interests of the minor. Such information shall include whether the minor has had at any time a guardian ad litem appointed by a court of any jurisdiction and an explanation of the facts regarding such previous appointment. Information regarding whether relief similar to the current petition has been sought on behalf of the minor, including whether a guardian ad litem was appointed for the such previous application for court approval.

50-5-217. The following persons, other than one who is the petitioner or who joins in the petition, shall be served with the petition by formal notice, as prescribed by Rule 4 of the Tennessee rules of civil procedure:

- (1) The minor;
- (2) The minor's legal custodian or guardian ad litem, if any, whether or not appointed or qualified in this state;
- (3) Each party to the contract;
- (4) The parent or parents of the minor;
- (5) Any person having the care and custody of the minor;
- (6) The person with whom the minor resides, if other than a parent or guardian; and
- (7) If it appears that the minor is married, the minor's spouse.

50-5-218. At the court's discretion, the hearing may be held in the court's chambers or courtroom. The proceeding shall be of record and may be sealed, if the court determines that sealing the record will be in the best interests of the minor.

50-5-219. The minor, unless excused by the court for good cause shown, shall attend personally before the court upon the hearing of the petition.

50-5-220.

(a) The court at such hearing or on an adjournment thereof, may by its order do any of the following:

- (1) Approve or disapprove the contract or proposed contract;
- (2) Approve the contract upon such conditions, with respect to modification of the terms thereof or otherwise, as it shall determine;
- (3) Appoint a guardian ad litem as provided by § 50-5-215;
- (4) Appoint a trustee to administer the trust for earnings as provided by § 50-5-222;

(5) Award reasonable attorney's fees and other expenses paid or to be paid by or on behalf of the minor in connection with the proceeding, approval of the contract, and its performance.

(b) The court shall consider the following factors in making its final determination:

- (1) The best interest of the minor;
- (2) Whether the minor is represented by a lawyer;
- (3) The length of the contract;
- (4) The age of the minor; and
- (5) Any other matter that the court deems appropriate.

50-5-221. The court shall ensure that any contract it approves shall contain all the requirements for the rendering of services of the minor and that the petition shall include a plan for the protection of earnings thereunder. The court shall consider the following when determining the protection of earnings:

- (1) The interest of the petitioner in the contract or proposed contract or in the minor's performance under such contract;
- (2) The parties who are entitled to the minor's earnings, and, if the minor is not so entitled, facts regarding the property and financial circumstances of the parent or parents, or legal custodian or guardian ad litem, or other third party;
- (3) A bank or trust account used expressly for the deposit of fees generated under the contract and the relationship of any proposed trustee of the minor's funds;
- (4) The percentage of fees generated which are intended for deposit; and
- (5) The minor's financial advisor or other third party who shall render investment advice and administer the bank or trust account. Notwithstanding any provision to the contrary, the creditors of any person, other than the minor, shall not be entitled to the earnings of the minor.

50-5-222. Notwithstanding any provision of law to the contrary, in an order approving a minor's contract as described in this act, the court shall require that fifteen percent (15%) of the minor's gross earnings pursuant to the contract to be set aside by the minor's employer in trust and shall be paid to the trustee appointed by the court so that it may be invested in an account or other savings plan, and preserved for the benefit of the minor. The court may also require that more than fifteen percent (15%) of the minor's gross earnings be set aside in trust, in an account or other savings plan, and preserved for the benefit of the minor, upon request of the minor's parent or legal guardian, or the minor, through his or her guardian ad litem.

50-5-223. If the court that has approved a contract pursuant to this part shall find that the physical or mental well-being of the minor is being impaired by the performance thereof or in violation of any minor labor law, it may, at any time during the term of the contract during which services are to be performed by the minor or rendered by or to the minor or during the term of any other covenant or condition of the contract, either revoke its approval of the contract which the court finds to be appropriate in the circumstances is agreed upon by the parties and the contract as modified is approved by order of the court. Application for an order pursuant to this subsection may be made by the minor, by his or her parent or parents or legal custodian, by the person having the care and custody of the minor, or by a guardian ad litem appointed for the purpose by the court on its own motion. The order granting or denying the application shall be made after hearing, upon notice of the parties to the proceeding in which the contract was approved, given in such manner as the court shall direct. Revocation of the approval of the contract shall not affect any right of action existing at the date of the revocation, except that the court may determine that a refusal to perform on the ground of impairment of the well-being of the minor was justified.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.